

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7440 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

RAMESHBHAI S BAROT

Appearance:

MR MD PANDYA for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Pandya has appeared for the
petitioner Corporation. Notice of rule has been served on
the respondent. However, nobody has appeared for the
respondent.

This Court, while issuing rule on 22.1.1991, has
directed that the name of the respondent workman shall be

reinserted in the list of Badli Workman subject to the ultimate outcome of this petition and no stay has been granted against the award passed by the labour court, Ahmedabad.

The facts of the present case, in short, are that the respondent workman who was on the waiting list of conductors was duty as bus conductor on purely temporary and ad hoc basis on the stage carriage of the corporation on 28.6.1983 from Visnagar to Ujni Route. On checking of the bus on the route at Unjha, it was found that one passenger travelling from Visnagar to Unjha was not issued the ticket though fare was duly recovered from him. One passenger travelling from Visnagar to Unjha and two from Visnagar to Vadnagar were also not issued the tickets by the said workman. Report to that effect was made by the checking party on 29.6.83 to the competent authority of the Corporation. Thereafter, the workman was served with show cause notice to show cause as to why his name should not be deleted from the wait list of the conductor in view of the misconduct found during the course of checking, to which the respondent workman has filed his written explanation. After consideration of the explanation submitted by the workman, and considering the statements of the passengers and other evidence on record, the charge levelled against the respondent was found to be proved and the respondent's name was deleted from the list of conductors without holding any departmental inquiry into the charge levelled against the workman in the show cause notice.

Said action of the Corporation was challenged by the respondent workman by filing reference before the labour Court at Ahmedabad. Before the labour Court, the legality, validity and propriety of the departmental proceedings were not challenged by the workman by filing pursuis. The labour court has considered the charges levelled against the respondent and came to the conclusion that the said misconduct was not serious and grave in nature and, therefore, the Corporation ought not to have passed the impugned order without holding departmental inquiry into the charge levelled against him. Therefore, the labour court has ordered reinstatement of the respondent workman to his original post with continuity of service without back wages for the intervening period.

Today, when the matter was taken up for final hearing, Mr. Pandya, the learned advocate appearing for the petitioner corporation has contended that the labour court has erred in coming to the conclusion that the

charge was not serious and grave in nature. He has submitted that though fare was collected, tickets were not issued and when such serious misconduct was committed and was found to have been proved by the competent authority, the labour court ought not to have ordered reinstatement of the respondent workman while exercising powers under Section 11A of the Industrial Disputes Act.

I have considered the submissions made by Mr. Pandya, the learned advocate for the petitioner corporation. I have also perused the impugned order passed by the labour court reinstating the respondent workman. The petitioner corporation has not made detailed departmental inquiry against the respondent workman before deleting his name from the waiting list of the conductors. The name of the respondent workman was deleted from the said list on the basis of the misconduct alleged to have been committed by the respondent. Such course of action adopted by the petitioner corporation is contrary to the principles laid down by this court in the decision reported in 1993 (1) GLR 442. In the said decision, it has been held that in such circumstances, reasonable opportunity should be given to the workman who is working as badli workman and detailed departmental inquiry is necessary in accordance with the principles of natural justice. Apart from these facts, since the legality and validity of the departmental inquiry has not been challenged by the respondent before the labour court, the labour court has considered the evidence which was produced before it and has concluded that the misconduct is not serious and grave in nature warranting deletion of the name of the respondent from the wait list of badli conductors. The labour court has exercised the powers under section 11A of the ID Act and while appreciating the facts on record, found that the action amounting to termination is unjust, unreasonable and improper and, therefore, while exercising the discretion vested in it under section 11A of the ID Act, the labour court ordered reinstatement of the respondent workman with continuity of service but has refused back wages.

In the facts and circumstances of the case, according to my view, the labour court has not committed any error while granting reinstatement of the respondent. No infirmity has been pointed out in the judgment and award of the labour court. Apart from these facts, while admitting this matter, this court has refused to stay the impugned award. On the contrary, it has been directed by this court that the name of the respondent workman be reinserted in the list of badli conductors, of course, subject to the ultimate outcome of this petition.

Therefore, in view of these interim directions of this court issued while admitting this petition, the respondent workman must have been reinstated in service in the year 1991 itself and after passage of about eight years, he must have been regularized in service also. It is, therefore, not in the fitness of things to interfere with the award of the labour court in this petition while exercising the powers under Article 226 and/or 227 of the Constitution of India. Thus, the petition is liable to be dismissed.

In the result, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

15.10.1999. (H.K.Rathod,J.)

Vyas